

Internal Revenue Service

Department of the Treasury

District
Director

Date: **JAN 29 1966**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for exemption from Federal income tax, under section 501(c)(3) of the Internal Revenue Code of 1954.

The evidence presented indicates you are an unincorporated association formed [REDACTED], pursuant to the provisions of the [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, etc.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

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Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family shareholder of the organization, or persons controlled, directly or indirectly, by such private interests.

The information submitted indicates you are a condominium association formed to administer the condominium, establish the means and methods of collecting assessments and charges, arranging for the management of the condominium and performing all other acts that may be required or permitted by the [REDACTED]. The activities appear to be directed toward the "exterior and common areas of the condominium, including, but not limited to, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls, perimeter walls, columns and girders, to the interior surfaces thereof, regardless of location; walkways, gardens, parking areas, recreational areas and facilities which are now or hereafter contained within the Condominium Property; all installations of power, lights, gas, heating oil, hot and cold water existing for common use, all devices or installations existing for common uses and all other elements of the property rationally of common use or necessary to its existence, upkeep and safety."

Your creating document contains no specific purposes within the scope of IRC section 501(c)(3) nor any restrictions limiting your purposes within the scope of IRC section 501(c)(3). Also, your assets are not permanently dedicated to section 501(c)(3) purposes as required by 1.501(c)(3)-1(b)(4) of the Income Tax Regulations.

Based on the information submitted, you do not satisfy the organizational test. Your creating document does not limit your purposes to exclusively section 501(c)(3) purposes, and, your assets, because they will be distributed to the condominium owners on a pro rata basis, are not permanently dedicated to section 501(c)(3) purposes.

Also, you do not satisfy the operational test, because your activities directed toward the private benefit of the condominium owners.

Accordingly, it is held that you are not organized and operated exclusively for the purposes described in section 501(c)(3) and thus fail to qualify for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1954.

It appears that your organization may elect to file under section 528 to receive certain tax benefits which, in effect, permit the exclusion of exempt function income from gross income.

The election to file under IRC section 528 is to be made by filing Form 1120H, U.S. Income tax return for Homeowners Associations. However, if you do not elect to file under section 528, you are required to file Federal Income Tax returns on Form 1120.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A small, stylized logo or mark, possibly a signature or initials, located below the signature line.

District Director

Enclosure: Pub. 892